IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 1 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CITY LIGHT ENGINEERS PVT. LTD. - Petitioner(s)
Versus
SALES TAX OFFICER & 3 - Respondent(s)

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Appearance :

MR JV MEHTA for Petitioner No(s).: 1.
DS AFF.NOT FILED (N) for Respondent No(s).: 1, 2,3.

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CORAM :THE HON'BLE MR.JUSTICE K.A.PUJ

Date : 22/06/2005

ORAL JUDGMENT

1. The petitioner, namely, City Light Engineers Pvt. Ltd. Has filed this petition under Section

433 (a) read with Section 439(1)(a) of the Companies Act, 1956 for its winding up.

2. This Court has issued notice to the Sales Tax Department as well as Unsecured Creditors. The order with regard to advertisement and final hearing of the petition was also passed by this Court on 10.01.2005 and the petitioner is directed to publish the advertisement in two Newspapers, namely, “Indian Express” - English Daily and “Jansatta” - Gujarati Daily – both of Ahmedabad Editions making it returnable on 04.02.2005. Since issuance of notice to Sales Tax Department and Unsecured Creditors as well as publication of the advertisement in two Newspapers, as ordered by this Court on 10.01.2005 was not effected, the Court has passed further order on 04.02.2005 for issuance of fresh notice to the Sales Tax Department as well as Unsecured Creditors and also with regard to advertisement of the petition in two Newspapers as ordered earlier. The matter was thereafter adjourned to 04.03.2005.

3. Pursuant to the said order, the Sales Tax Department and one of the Unsecured Creditors, namely, Anil C. Raval were served on 23.02.2005

whereas another Unsecured Creditor, namely, Mrs. Rashmi Pandey was served through Regd. A.D. Post and affidavit to this effect was filed before the Court on 11.03.2005. Along with the said affidavit, necessary newspaper cuttings are also placed on record. The Court has not passed any order with regard to publication of advertisement in the Govt. Gazette and hence, it was considered to be dispensed with.

4. Mr. J.V. Mehta, learned advocate appearing for the petitioner has submitted that the petitioner Company was not doing any business for the last several years and the accumulated losses as on 31.03.2004 mounted at Rs.5,04,031.38ps. The assets of the Company are insufficient to meet with the liabilities and it is no longer possible to run the Company except at loss. The Company having lost the subject matter and the object with which it was incorporated, has found expedient to wind up the Company. Hence, the Company has resolved to file a winding up petition to this Court for winding up of the Company. Accordingly, the Board of Directors of the Company in their meeting dated 31.03.2004 resolved that the Company has been incurring continued losses for the past several years and that the assets of the Company

were insufficient to meet the liabilities and that it is no longer possible to run the Company except at loss. Thereafter, notice calling Extraordinary General Meeting in accordance with the provisions of Section 189(2)(a) of the Companies Act, 1956 was duly dispatched on 31.03.2004 to the members, creditors and all the concerned for considering the matter of winding up of the Company along with the draft resolution and explanatory statement as provided under Section 173(2) of the Act. Mr. Mehta has further submitted that the Company unanimously passed the Special Resolution in the meeting held on 24.04.2004 approving the decision of the Board of Directors and authorizing the Board of Directors to file the winding up petition before this Court. Accordingly, this petition has been filed.

5. Mr. Mehta has further submitted that during the years after the peak, the Company has to resort to the frequent change in the situation of the Regd. Office of the Company under compelling circumstances, including financing of routine expenses and the salary of the employees of the Company, of liquidity crisis which were ultimately resolved by disposal of the assets. The Company's furniture and stocks were sold to pay

off the Creditors. All the employees have relinquished their jobs in view of the stoppage of the business by the Company with only two directors in the Board of Directors running the residual businesses of the Company. There are no Creditors of the Company except the balance of Unsecured loans. The outstanding dues of the Company are to the tune of Rs.1,41,573/- payable to Shri Anil Raval and Rs.1,93,324.50/- payable to Smt. Rashmi Pandey. Both these Unsecured Creditors have been duly served and they have not filed any objection before this Court against the winding up of the Company.

6. Mr. Mehta has further submitted that during the year ended on 31.03.2004, the Company received the Sales tax assessment order from the Sales tax Department in respect of Sales Tax liabilities of Rs.8,97,413/- which includes a penalty of Rs.3,68,800/- and an interest of Rs.2,21,280/-. It is only because of that, notice was issued to the Sales Tax Department and despite service of notice, nobody remained present on behalf of Sales Tax Department.

7. Mr. Mehta has, therefore, submitted that

looking to the facts and circumstances of the case and the submissions made by the petitioner in the petition as well as the oral submissions made by him before this Court, the winding up order should be passed.

8. After having heard learned advocate appearing for the petitioner and after having gone through the petition as well as the documents attached therewith, the Court is of the view that the Company is required to be wound up under the Provisions of Section 433 (a) read with Section 439 (1)(a) of the Act. The Company is not carrying on any business activities. It has accumulated losses to the great extent. If the Company is allowed to function, only the losses will be mounting up. There is no Secured Creditor of the Company and Unsecured Creditors of the Company are not raising any objection for winding up of the Company. There is Sales tax liability. This order would not come in the way of the Sales tax department for recovery of its dues. Since the petitioner Company has lost its financial substratum and financial stability of the Company no longer exists, the Company is hereby ordered to be wound up. The Official Liquidator attached to this Court is hereby appointed as the liquidator

of the Company. Mr. Mehta has submitted that there is no assets of the Company. Despite this fact, if there is any assets, the O.L. will take charge of the assets of the Company and proceed with the realisation of the assets, if any, and/or discharge of the liabilities out of the sale proceeds of that assets. The Official Liquidator will call for the statement of affairs and will also examine the records of the Company maintained by R.O.C.

9. Subject to the aforesaid directions and observations, this petition is accordingly disposed off without any order as to costs.

[K.A. PUJ, J.]

Savariya